

Hon. Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

SUSAN ROUTH, LINDA EBY, MARY JANE
AURDAL OLSON, DOUG SCHLYER and
SANDY SCHLYER, on behalf of themselves
and others similarly situated,

Plaintiffs,

v.

SEIU HEALTHCARE 775NW,

Defendant.

NO. 2:14-cv-00200 MJP

FOURTH AMENDED CLASS
ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs allege as follows:

I. PARTIES

1.1 Plaintiffs Susan Routh, Linda Eby, Mary Jane Aurdal Olson, Doug Schlyer and Sandy Schlyer are individuals residing in the State of Washington. All are “Individual Providers” as defined in RCW 74.39A.240 and all have paid union dues and/or agency fees pursuant to the statutes and contracts challenged in this litigation.

1 1.2 Defendant SEIU Healthcare 775NW is a labor union that, according to its
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3 website, “represents more than 40,000 long-term care workers providing quality in-home care,
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5 nursing home care and adult day health services in Washington State and Montana.”
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7 **II. JURISDICTION AND VENUE**

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9 2.1 This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343
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11 because it includes a claim brought pursuant to 42 U.S.C. § 1983 and the First and Fourteenth
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13 Amendments to the United States Constitution. The Court has pendent jurisdiction over the state
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15 law claims brought against SEIU because they arise out of the same transaction or occurrence as
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17 Plaintiffs’ federal claims.
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19 2.2 The Court has personal jurisdiction over Defendant because it resides in and
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21 transact business in the State of Washington.
22

23 2.3 Venue in this district is proper under 28 U.S.C. § 1391 because a substantial
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25 portion of the events giving rise to this lawsuit occurred in this district, and because the
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27 Defendant resides in this district.
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29 **III. CLASS ACTION ALLEGATIONS**

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31 3.1 Plaintiffs seek certification of two separate classes. The First Class is comprised
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33 of all Individual Providers who, at any point since February 14, 2011 were subjected to
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35 deductions of dues/agency fees without their explicit consent but who did not affirmatively
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37 object at any time to those deductions or to union membership. The Second Class is comprised
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39 of all Individual Providers who provided written notification to SEIU or the State of Washington
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41 that they objected to paying dues or fees to SEIU, and at any time since February 14, 2011 were
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1 subjected to automatic deductions of union dues or agency fees without their recorded,
2
3 affirmative consent.
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5 3.2 Plaintiffs satisfy the numerosity requirement because each class is comprised of
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7 thousands of Individual Providers.
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9 3.3 Plaintiffs satisfy the commonality and typicality requirements. With respect to
10
11 the damages claims asserted herein: (1) Doug Schlyer, Sandy Schlyer and all members of the
12
13 First Class had money taken and paid to SEIU without their express, affirmative consent; and
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15 (2) Routh, Eby, Olson and all members of the Second Class affirmatively objected to paying
16
17 money to SEIU and had money taken and paid to SEIU. The First Amendment to the U.S.
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19 Constitution prohibits deductions from the pay of Individual Providers, for the benefit of SEIU,
20
21 without the Individual Providers' express, affirmative consent. As such, all members of both
22
23 classes had deductions taken in violation of the First Amendment. Commonality and typicality
24
25 exist with respect to Plaintiffs' state law claim for restitution/unjust enrichment because these
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27 claims are premised on the fact that the First Amendment requires express, affirmative consent
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29 and such consent was not obtained from class members prior to the deductions.
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31 3.4 Plaintiffs satisfy the adequacy of representation requirement. Plaintiffs will
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33 adequately represent the classes because they are able and willing to vigorously prosecute this
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35 action on behalf of themselves and class members. Plaintiffs do not have any interests that
36
37 conflict with the class. Class counsel have significant experience in class action litigation,
38
39 including class litigation on behalf of public sector employees, and have the resources and
40
41 experience to prosecute this class action.
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1 3.5 The prosecution of multiple individual actions by Individual Providers to redress
2
3 SEIU's conduct challenged herein would create the risk of inconsistent rulings. Such rulings
4
5 would subject SEIU to differing standards of conduct.
6

7 3.6 The prosecution of individual actions by Individual Providers would as a practical
8
9 matter dispose of the interests of absent Individual Providers, by creating standards of conduct
10
11 that would be applicable to all Individual Providers alike.
12

13 3.7 The statutes and conduct challenged in this litigation apply to all members of each
14
15 respective class. SEIU treated all members of each class similarly with respect to those statutes
16
17 and that conduct.
18

19 3.8 The questions and issues common to each class predominate over any matters that
20
21 may require resolution on an individual basis. A class action is the most efficient means of
22
23 adjudicating the rights and responsibilities of SEIU and the classes, and is superior to numerous
24
25 individual lawsuits challenging the same policies.
26

27 **IV. FACTS ENTITLING THE CLASS TO RELIEF**

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29 4.1 Prior to June 2014, the State of Washington took automatic monthly deductions
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31 from the paychecks of Individual Providers and delivered those funds to SEIU, including
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33 Individual Providers who did not expressly consent to those deductions and those who
34
35 affirmatively objected. The only exception was made for "religious objectors," who could opt to
36
37 have their deductions delivered to a nonprofit of their choice. That exception is not relevant to
38
39 this lawsuit.
40

41 4.2 In June 2014 the State and SEIU ceased the practice of taking deductions from
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43 those who objected, in light of the Supreme Court's ruling, in *Harris v. Quinn*, 134 S. Ct. 2618
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1 (2014), that the First Amendment forbids states to take compulsory union deductions from
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3 persons who were not full-fledged public employees. But they continued to deduct money from
4
5 all Individual Providers who had neither affirmatively consented nor objected, on the
6
7 presumption that silence on the issue was tantamount to consent.
8

9 4.3 On June 26, 2018 the Supreme Court held that the First Amendment forbids states
10
11 and unions to take union deductions without the workers' express, affirmative consent. *Janus v.*
12
13 *AFSCME Council 31*, 138 S. Ct. 2448 (2018). In light of *Janus*, the State and SEIU ceased
14
15 deductions from any Individual Providers who had not signed union membership cards.
16

17 4.4 Notwithstanding the fact that compulsory deductions and deductions without
18
19 affirmative consent have been declared unconstitutional, SEIU has not refunded to Individual
20
21 Providers the monies it received under those two deduction systems.
22

23 V. CAUSES OF ACTION

24 Violation of First and Fourteenth Amendments and 42 U.S.C. § 1983

25 Plaintiffs incorporate all of the above allegations as if fully set forth herein.
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27

28 5.1 Plaintiffs have been harmed in that they were subjected to compulsory deductions
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30 and/or deductions without the affirmative consent required by the First Amendment, and have
31
32 not received refunds of those monies. SEIU acted under color of state law in participating in and
33
34 benefiting from these deduction systems.
35
36

37 Unjust Enrichment

38 5.2 Plaintiffs have conferred benefits upon SEIU in the form of monies they paid over
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40 their objection and/or without their affirmative consent. SEIU acted in concert with the State to
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42 arrange for these deductions to go to SEIU. The circumstances under which those payments
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1 were made render it unjust for SEIU to retain those monies, and give Plaintiffs a right to have
2 those funds restored to them.
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5 **VI. JURY DEMAND**
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7 6.1 Plaintiffs demand a trial by jury on their claim for money damages.
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9 **VII. RELIEF REQUESTED**
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11 7.1 Plaintiffs are entitled to damages in the amount of the monies unlawfully taken
12 from them in violation of the First Amendment. Alternatively, they are entitled to restitution of
13 those monies under the doctrine of unjust enrichment.
14

15 7.2 Plaintiffs seek an award of all reasonable fees and costs, including without
16 limitation for attorney's fees pursuant to 42 U.S.C. § 1988 and any other applicable statute,
17 and/or an award of fees based on the common fund doctrine.
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19 7.3 Plaintiffs seek an award of prejudgment interest.
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21 7.4 Plaintiffs request such other relief as the Court deems just and equitable.
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23 DATED this 8th day of January, 2019.
24

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CERTIFICATE OF SERVICE

I hereby certify that on January 8, 2019, a true and correct copy of the foregoing was served on counsel via electronic mail only as follows:

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